



The sole question is whether appellant qualified as a head of household for the taxable year 1975.

Appellant filed a timely personal income tax return for 1975, **claiming** head of household status. The return indicated **that** the individual qualifying him for that filing status was one Kim Rahaeuser. Upon inquiry respondent learned that Kim Rahaeuser was appellant's wife during 1975 and that they had lived in the same household for ten months of that year. They had no children. Eventually the marriage was dissolved but not until some time after December 31, 1975. Respondent's disallowance of appellant's claimed head of **household** status gave rise to this appeal.

Section **17042** of the Revenue and Taxation Code provides, in part, that an individual shall be considered a head of household **if, and only if,** he or she is not married at the close of the taxable year. For purposes of section 17042, in order to be considered "not married" an individual must either be **legally** separated from his spouse under a final decree of divorce or a decree of separate maintenance. (Rev. & Tax. Code, § 17043, subd. (b)), or he must meet all the requirements of subdivision (c) of section 17173 of the Revenue and Taxation Code. Two of those requirements are that the married individual live apart from his spouse for the entire taxable year and that he maintain a home for a dependent **child** or stepchild.

Appellant cannot be considered as "not married" under **any of the above provisions, since he was still legally,** married at the close of 1975, his wife, Kim, shared his household for approximately ten months of 1975, and he had no dependent children for whom he maintained a home. It is clear that, appellant was not eligible to file as a head of household in 1975, and respondent's disallowance of that filing status must therefore be sustained.

Appeal of Robert Rahaeuser

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Robert Rahaeuser against a proposed assessment of additional personal income tax in the amount of \$205.00 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of April, 1979, by the **State Board of Equalization.**

*Shallan B. Bennett* Chairman  
*John A. Gloor*, Member  
*Robert J. Bunker*, Member  
*John A. Gloor*, Member  
*John A. Gloor*, Member